

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Reexamination of the Comparative) MM Docket No. 95-31
Standards for Noncommercial)
Educational Applicants)

COMMENTS OF NEW LIFE EVANGELISTIC CENTER, INC.

New Life Evangelistic Center, Inc. (NLEC) is the licensee or permittee of seven Noncommercial, Educational, FM stations in Missouri. It is a nonprofit, non-stock corporation organized under the laws of Missouri and it is tax-exempt pursuant to Section 501(c)(3) of the Internal Revenue Code. It is the licensee or permittee of two full power commercial television stations, KNLC, St. Louis and KNLJ, Jefferson City, MO; ten LPTV stations in Missouri and Arkansas and eight commercial radio stations¹ in Missouri, Arkansas and Illinois.²

NLEC has acquired its stations through the comparative hearing process (KNLC) and via the lottery (certain of its LPTVs) as well as by outright grant in uncontested and/or settled scenarios. The Commission proposes to adopt either a lottery or a point system³ as the process for choosing between competing, mutually exclusive, noncommercial applicants. The Communications Act gives the Commission discretion in deciding whether

¹As of December 22, 1998 this is scheduled to increase to ten as the assignment of licenses of stations WINU and WBDI, Highland, Illinois is consummated.

²See Exhibit No. 1.

³NLEC does not read the comparative hearing process as a viable candidate for continued existence in the Further Notice.

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to employ a lottery, but if it does, must utilize criteria that heavily favor minorities in the selection process.

NLEC is unalterably opposed to the use of race or ethnicity as a basis for selection. To do so would be to revert to the days of *Metro Broadcasting, Inc. v. FCC*⁴ in the face of *Adarand v. Peña*⁵ which specifically overruled *Metro*⁶ as bad law and an aberration.⁷ The Commission's journal of proceedings, the *FCC Record*, is replete with case after case, during the 1980s and early 1990s, of sham applicants pretending to be minority controlled and pretending to be financially qualified, where in fact they were neither. By and large, the sham applicants were unveiled, if at all, through the crucible of the hearing process.

A minority weighted lottery is to be avoided at all costs because it cannot pass constitutional muster. It is facially invalid.⁸ To so adopt, would guarantee two to three

⁴497 U.S. 547 (1990).

⁵515 U.S. 200 (1995).

⁶*Id.* at 227.

⁷ The Supreme court in *Adarand* said: "Metro Broadcasting undermined important principles of this Court's equal protection jurisprudence, established in a line of cases stretching back over fifty years, see *supra*, at 11-23. Those principles together stood for an "embracing" and "intrinsically sound" understanding of equal protection "verified by experience," namely, that the Constitution imposes upon federal, state, and local governmental actors the same obligation to respect the personal right to equal protection of the laws. This case therefore presents precisely the situation described by Justice Frankfurter in *Helvering*: we cannot adhere to our most recent decision without colliding with an accepted and established doctrine. We also note that Metro Broadcasting's application of different standards of review to federal and state racial classifications has been consistently criticized by commentators." 515 U.S. at 231.

⁸NLEC acknowledges that the Commission is powerless to find its own governing statute unconstitutional; nonetheless nothing precludes the Commission from acting in such a way as to not put that provision of the Communications Act, 47 U.S.C. § 309(i)(3), to the judicial test.

years of appellate litigation and resulting uncertainty, throwing into doubt the licensing process in the meantime. We have waited long enough without waiting for the results of a constitutionally suspect methodology to wend its way through the courts.

Even if such a lottery somehow got by the strict scrutiny to which it would be subjected under *Adarand*, as a practical matter the abuses of old would be worse here. Who are minorities and who has control of the various to-be-formed applicants cannot be left to the good faith of prospective applicants. We have seen legion abuses where applicants were subject to the prospect of detection. Imagine what it would be like where there is no means of testing the applicants' assertions as to their minority makeup or that minority's control of the applicant.

The proposed point system is by far the better vehicle. It, however, must not be infected with any minority preference (for tie-breaking or other purposes) or it, too, likely will fall when challenged. Moreover, as to how to resolve ties, time sharing is not a viable solution. More often than not, the contesting noncommercial entities do not share ideological goals, making sharing of facilities and/or frequencies unrealistic.

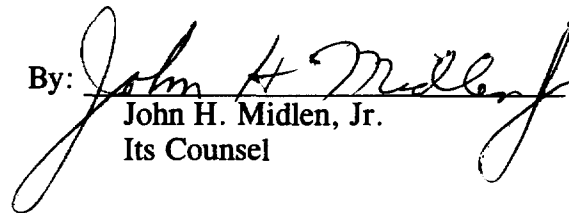
For the foregoing reasons, the point system set out in the Further Notice should be adopted, provided that in no event should race or ethnicity ever be a basis for points or

lack thereof and provided further that it should be recognized that noncommercial entities should not be regarded as fungible commodities for time sharing purposes.

Respectfully submitted,

NEW LIFE EVANGELISTIC CENTER, INC.

By:

A handwritten signature in black ink, appearing to read "John H. Midlen, Jr.", written over a horizontal line.

John H. Midlen, Jr.
Its Counsel

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December 14, 1998

Exhibit No. 1
BROADCAST INTERESTS AND APPLICATIONS
of NEW LIFE EVANGELISTIC CENTER, INC.

The applicant is:

- a. The licensee of Television Stations:
 - 1. KNLC, St. Louis, Missouri¹ and
 - 2. KNLJ, Jefferson City, Missouri;
- b. The licensee of Radio Stations:
 - 3. KTCN(FM), Eureka Springs, Arkansas,
 - 4. WDID, Shelbyville, Illinois,
 - 5. KKLL, Webb City, Missouri,
 - 6. KWAS, Joplin, Missouri and
 - 7. KMRF, Marshfield, Missouri;
- c. The licensee of Low Power Television Stations:
 - 1. K44DO, Osage Beach, Missouri,
 - 2. K24DF, Lebanon, Missouri,
 - 3. K39CI, Springfield, Missouri,
 - 4. K68EL, Marshfield, Missouri,
 - 5. KNJD-LP, Branson, Missouri,
 - 6. KNJE-LP, Eureka Springs, Arkansas,
 - 7. K61GJ, Aurora, Missouri,
 - 8. K36DF, Joplin, Missouri and
 - 9. K54FH, Green Forest, Arkansas;
- d. The permittee of Low Power Television Station K64FO, Fayetteville, Arkansas;
- e. The licensee of noncommercial, educational FM stations:
 - 1. KNLM, Marshfield, Missouri
 - 2. KNLG, New Bloomfield, Missouri and
 - 3. KNLP, Potosi, Missouri;
- f. The permittee of noncommercial, educational FM stations:
 - 1. KNLH, Cedar Hill, Missouri,
 - 2. KBIY, Van Buren, Missouri,
 - 3. 970711MA, Harrison, Missouri and

¹Application for modification of facilities pending, File No. BPCT-970509KE.

4. 970703MB, Vienna, Missouri;
- g. The permittee of FM Station KAUL, Ellington, Missouri;
- h. The licensee of transmit/receive earth station 1832-DSE-P/L-97;
- i. Applicant for Construction Permits for:
 1. A new television station on Channel 34 at Eureka Springs, Arkansas, File No. BPCT-960703KJ,
 2. A new noncommercial educational FM station on Channel 209 at East St. Louis, Illinois,² File No. BPED-960924MA,
 4. A new noncommercial, educational FM station on Channel 201 at Blytheville, Arkansas,³ File No. BPED-970509MA,
 5. A new noncommercial, educational FM station on Channel 210 at Tipton, Missouri,⁴ File No. BPED-970613MD,
 6. A new noncommercial, educational FM station on Channel 206 at Perryville, Missouri, File No. BPED-970925ME,
 7. A new noncommercial, educational FM station on Channel 205 at Eureka Springs, Arkansas, File No. BPED-980622MB,
 8. A new noncommercial, educational FM station on Channel 220 at Cuba, Missouri, File No. BPED-980821MD;
- j. Applicant for Assignment of Licenses of Stations WINU and WBDI, Highland, IL, File Nos. BAL-980728GJ and -GK;

and was an applicant for a construction permit for a new commercial television station at (i) Toledo, Ohio, File No. BPCT-860410KT, which application was denied on comparative grounds, 4 FCC Rcd 2659, and (ii) Harrison, Arkansas, File No. BPCT-951106KJ, which was voluntarily dismissed contemporaneously with the filing of the Eureka Springs television application.

²Settlement and grant request pending.

³Settlement and dismissal request pending.

⁴Settlement and dismissal request pending.